

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL DEPOSIT	:	
INSURANCE CORP. as	:	
RECEIVER for NOVA BANK,	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 12-7231
v.	:	
	:	
HILLARY G. MUSSER,	:	
Defendant.	:	

ORDER

AND NOW, this 28th day of February, 2017, it is **ORDERED** that:

- Plaintiff's Motion for Summary Judgment on Count I (ECF No. 73) is **DENIED**;
- As to Plaintiff's Motion to Strike Defendant's Affirmative Defenses (ECF No. 74)¹ is **GRANTED IN PART AND DENIED IN PART**, as follows:
 - Plaintiff's motion to strike the affirmative defense of breach of fiduciary duty is **DENIED without prejudice**;
 - Plaintiff's motion to strike the affirmative defense of fraud in the inducement is **GRANTED**, and Plaintiff's motion to strike the affirmative defense of fraud in the factum is **DENIED without prejudice**;
 - Plaintiff's motion to strike the affirmative defense of the UTPCPL is **DENIED without prejudice**;
 - Plaintiff's motion to strike the affirmative defense of unclean hands as to Counts I, II, and III is **GRANTED**;
 - Plaintiff's motion to strike the affirmative defense of lack of subject matter jurisdiction is **GRANTED**;

¹ The FDIC styled its motion as a Motion to Strike or, in the Alternative, for Summary Judgment on Each of Defendant's Affirmative Defenses. Because the Parties have not completed discovery in this case, I am ruling on the FDIC's motion as a motion to strike affirmative defenses. After the close of discovery, the FDIC may move for summary judgment on any remaining affirmative defenses.

- Plaintiff's motion to strike the affirmative defense of lack of signature is **GRANTED**;
- Plaintiff's motion to strike the affirmative defense of recoupment is **GRANTED**;²
- Plaintiff's motion to strike the affirmative defense of failure of consideration is **GRANTED** as to Count II and **DENIED without prejudice** as to Counts I and III.

A memorandum will follow.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

Copies **MAILED** on _____ to:

² I will reconsider the validity of Musser's recoupment defense and the Parties' relevant briefing as part of my future ruling on the recently filed Motion for Reconsideration (ECF No. 88).